

**\*\*E-filed 7/11/11\*\***

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

FRANCISCO M. ORTIZ, et al.,

No. C 10-4812 RS

Plaintiffs,

**ORDER RE PLAINTIFFS' REQUEST  
FOR "REMAND"**

v.

WELLS FARGO BANK, N.A.,

Defendants.

Pursuant to the order dismissing the First Amended complaint, but granting leave to amend, plaintiffs Francisco and Reyna Ortiz have filed a Second Amended Complaint. In that pleading, the Ortizes assert that they have removed all claims based on federal law, and request that the matter be "remanded" to Contra Costa Superior Court. This action cannot be remanded because it was filed in this Court originally, not removed from state court. The Ortizes, however, have the option of filing a voluntary dismissal of this action without prejudice, and refile in state court. They are advised, however, that the Second Amend Complaint as presently pleaded appears to include at least one claim based on Federal Law (violation of "HAMP") and that Wells Fargo contends that there is complete diversity of citizenship between it and them. Accordingly, if the Ortizes dismiss and refile in state court, there is a possibility that Wells Fargo will remove the matter to federal court, contending there is a federal question or diversity of citizenship, or both. Additionally, the Court expresses no opinion as to whether dismissal and refile would give rise to additional statute of

1 limitations issues, or whether the Ortizes would be entitled to tolling of the statute of limitations  
2 during the time this action has been pending in this forum. In the event the Ortizes elect to dismiss,  
3 they should do so on or before July 14, 2011, when their opposition to Wells Fargo's pending  
4 motion to dismiss the Second Amended Complaint is otherwise due.

5  
6 IT IS SO ORDERED.

7  
8 Dated: 7/11/11



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RICHARD SEEBORG  
UNITED STATES DISTRICT JUDGE

**THIS IS TO CERTIFY THAT A HARD COPY OF THIS ORDER WAS MAILED TO:**

Francisco M. Ortiz  
Reyna R. Ortiz  
1716 Bush Avenue  
San Pablo, CA 94806

DATED: 7/11/11

/s/ Chambers Staff

Chambers of Judge Richard Seeborg